

IMMEDIATE RELEASE

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In a unanimous opinion written by Justice Roger S. Burdick, the Idaho Supreme Court reverses and vacates a district court's determination of negligence in the exercise of the Boise Project Board of Control's use of a flowage easement for the Hubbard Reservoir. A subsequent award of damages based upon that alleged negligence is vacated and the case is remanded to the district court for further proceedings.

Darwin and Patricia McKay and their company, the Turf Company, brought an action for damages as a result of a crop loss resulting from the flooding of land in the Hubbard Reservoir basin. The Boise Project Board of Control holds the flowage easement in the Hubbard Reservoir which has been interpreted to mean that the project may flood the reservoir for routine irrigation operations to a certain water level, if it may desire. The McKays having actual knowledge of that water level as well as the intent of the Project Board of Control's intent to fill Hubbard Reservoir, planted turf grass in the project's flowage easement for the reservoir.

The Idaho Supreme Court found that the fact an easement may be wasteful is not grounds for a finding of negligence or duty to third parties unless that wasteful nature specifically damages the third-party. In this case, the wasteful nature of the flowage easement was the fact that large portions of the water leaked out of the Hubbard Reservoir basin. Hubbard Reservoir may have been an inefficient reservoir, however, that could not be a basis for the McKay's cause of action in planting grass in the reservoir basin and sustaining damages as a result of flooding of that reservoir.

The Court found that the Project had broad discretion in filling the reservoir and even though the reservoir may have been inefficient, in this case there was no duty to protect McKay's grass crop. The Court found there could still be liability if the waste had been the direct cause of McKay's damage.